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SECURED CREDITORS OF A NATIONAL BANK.—The recent case of *Merrill* v. *National Bank of Jacksonville*, 19 Sup. Ct. Rep. 360, before the Supreme Court of the United States, is notable both because of its practical importance and the care and thoroughness of the opinions. The question, on the merits, was whether a secured creditor of an insolvent national bank should receive dividends *pro rata* to his original claim without regard to his security, — subject always to the proviso that his claim should cease when from the dividends and disposal of the security he should have been paid in full, — or whether the dividends should be *pro rata* to the balance of his claim after disposing of the security. It was admitted that he might throw up the security and prove for the full amount of the claim if he so chose.

The National Banking Act of 1876, Revised Statutes, § 5236, provides that in such cases "the comptroller shall make a ratable dividend" on all recognized claims. The question turned then on the meaning of "ratable dividend." The majority of the court held that this act, in the absence of specific provision, left equity free to administer the assets according to the ordinary "chancery rule" and allow the creditor to prove his original claim and receive dividends *pro rata* to that entirely without reference to his security. *Prima facie* that seems right and the view gets some countenance from the case of *Scott* v. *Armstrong*, 146 W. S. 499, where the same statute was construed to allow a creditor of a national bank a right of set-off though there was no specific provision in the act to that effect.

The view of the minority — most clearly stated by Mr. Justice Gray — rests on the interpretation of like provisions in preceding statutes. Under every statute regarding bankruptcy, English and American, from 13 Eliz c. 7, § 2, it has been the uniform practice to allow the secured creditor who chooses to hold on to his security to prove only for the balance of his claim, and most of those statutes have been without specific provisions in that regard. The course of the American statutes gives a most telling

argument. The bankrupt Act of 1800 provided particularly for secured creditors, — the Act of 1841 omitted that provision yet the practice under it was the same. And more, the argument regarding set-off, *Scott* v. *Armstrong supra*, is nullified by the fact that set-off was allowed under all these statutes, which like the National Banking Act contained no provision in regard to it.

Although the wording of the bankruptcy statutes was not precisely the same, in the face of the unbroken course of judicial interpretation the decision of the principal case seems wrong. It was pointed out that all these statutes dealt with bankruptcy. That tends to weaken the argument, but it still seems conclusive; it is not apparent why bankruptcy statutes stand on any peculiar ground.

Mr. Justice White — Mr. Justice Harlan, and Mr. Justice McKenna concurring — urged also another line of argument: that, granting that the National Banking Act did not apply, still equity in making its distribution should follow the "bankruptcy rule" in analogy with the statutory provisions and to secure uniformity. It seems that the majority had much the better of this branch of the case. It is hard to see why on the merits the "bankruptcy rule" is the juster of the two, — why should not the secured creditor get the full advantage of his diligence and hold the security entirely apart from his legal claim? At best there is no great preference between the rules. And it is quite clear that the equity which the Supreme Court is to administer, as they have repeatedly declared, is to be founded on the principles of the Courts of Chancery, not to be dependent on valuable statutes. The court might be guided by them in contriving some new method of administration, hardly to alter an old one, and even in America the "chancery rule" of distributing the assets without regard to the securities held must be considered the settled equity practice.

ALIENATION OF AFFECTIONS. — Under the common law a married woman was unable to maintain an action against a third person for alienating her husband's affections; that could hardly be said to have been an unjust discrimination against the wife, for there were two decisive — though somewhat technical — reasons for the doctrine. In the first place the husband would have been required to bring the action and was himself *in pari delicto*, as it were; and secondly the damages recovered would have become his property. It is evident that neither of these reasons apply under our modern statutes enlarging the rights of married women, yet the wife was denied such an action by the Supreme Court of Maine in *Morgan* v. *Martin*, 42 Atl. Rep. 354 (Me.). The court recognized that there were no technical difficulties in the way of the suit and based their decision on grounds of policy. The wife has an adequate remedy in divorce, and such actions "seem to be better calculated to inflict pain upon the innocent members of the families of the parties than to secure redress to the persons injured." This reasoning, however, does not seem convincing. It puts the burden of the wrong on the husband who may, in some cases, be a comparatively innocent party. And it may well be doubted if divorce would be in many cases either an adequate or a desirable remedy. It would be attended with equally painful consequences to the families of the parties, especially if there were children, with the lamentable result that a substantial injury would often go unredressed. Such seems to be